

Court File No. CV-18-603360-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE WINDING UP OF
OXFORD ADVANCED IMAGING INC.**

**APPLICATION UNDER SECTION 207 OF THE
BUSINESS CORPORATIONS ACT, R.S.O. 1990, c. B.16**

**FIFTH REPORT OF KPMG INC. in its capacity as
SALES OFFICER OF OXFORD ADVANCED IMAGING INC.**

December 4, 2019

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I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

1. The Toronto-Dominion Bank (“**TD Bank**”) filed an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for interim relief pursuant to sections 207 and 209 of the *Business Corporations Act*, (Ontario) for among other things, an order for the sale of the assets and business of Oxford Advanced Imaging Inc. (“**OAI**”) and for the appointment of KPMG Inc. (“**KPMG**”) as sales officer of OAI (the “**Sales Officer**”).
2. The Application was heard on August 29, 2018 and KPMG was appointed Sales Officer pursuant to an Order (the “**Appointment Order**”) which, among other things, authorized and directed the Sales Officer carry out a process (the “**Sales Process**”) for the sale of the assets and business of OAI (the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”** herein.
3. The Property consisted of all the assets, undertakings and properties acquired for, or used in relation to, OAI’s diagnostic imaging clinics. The operations of OAI consisted of two clinics, one is located in Mississauga, Ontario and the other one is located in Ajax, Ontario.
4. The Sales Officer issued its first report to the Court on November 12, 2018 (the “**First Report**”). As detailed in the First Report, the Sales Officer brought a motion returnable on November 20, 2018 seeking an Approval and Vesting Order (the “**Approval and Vesting Order**”) approving: (a) the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Sales Officer and 2659428 Ontario Inc. (the “**Purchaser**”) dated October 25, 2018 (the “**Asset Purchase Agreement**”), as amended by an amending agreement dated November 19, 2018 (the “**First Amendment**”) and a second amending agreement dated April 23, 2019 (the “**Second Amendment**”, and together with the Asset Purchase Agreement and First Amendment, the “**Amended Asset Purchase Agreement**”) and vesting in the Purchaser, OAI’s right, title and interest in and to the assets described in the Amended Asset Purchase Agreement; and (b) the Sales Officer’s activities as set forth in the First Report.

5. The Sales Officer issued its second report to the Court on April 26, 2019 (the “**Second Report**”). As detailed in the Second Report, the Sales Officer brought a motion returnable on May 2, 2019 seeking an Order approving: (a) the Second Amendment, and (b) approving the activities of the Sales Officer as set out in the Second Report and approving the fees and disbursements of the Sales Officer and the Sales Officer’s legal counsel, Dentons Canada LLP (“**Dentons**”), for the period up to January 30, 2019.
6. The Sales Officer issued its third report to the Court on June 12, 2019 (the “**Third Report**”). As detailed in the Third Report, the Transaction closed on May 30, 2019 and the Sales Officer brought a motion returnable on June 18, 2019 seeking an Order (the “**First Distribution Order**”): (a) updating the Court with respect to the closing of the Transaction; (b) authorizing and approving the Sales Officer to make a distribution from the proceeds of the closing of the Transaction (the “**Sale Proceeds**”) to TD Bank and ECN Financial Inc. (“**ECN**”) in full and final satisfaction of the indebtedness owing by OAI to each of TD Bank and ECN, and to KPMG Corporate Finance Inc. and Blake, Cassels & Graydon LLP for the fees and disbursements incurred by OAI prior to the making of the Appointment Order; and (c) approving the activities of the Sales Officer as set out in the Third Report and approving the fees and disbursements of the Sales Officer and Dentons for the period of February 1, 2019 to May 31, 2019.
7. The Sales Officer issued its fourth report to the Court on August 23, 2019 (the “**Fourth Report**”). A copy of the Fourth Report (without appendices) is attached as **Appendix “B”** herein. As detailed in the Fourth Report, the Sales Officer brought a motion returnable on August 29, 2019 seeking an Order (the “**Claims Procedure Order**”): (a) approving and authorizing the Claims Procedure (as defined in the Claims Procedure Order) and authorizing, directing and empowering the Sales Officer to implement and carry out the Claims Procedure in accordance with the terms of the Claims Procedure Order; and (b) approving the activities of the Sales Officer as set out in the Fourth Report.
8. On August 29, 2019, the Court granted the Claims Procedure Order. A copy of the Claims Procedure Order is attached as **Appendix “C”** herein.

9. Capitalized terms used but not otherwise defined herein shall have the same meanings set out in the Claims Procedure Order.

II. PURPOSE OF THIS FIFTH REPORT

10. The purpose of the Sales Officer's fifth report to the Court dated December 4, 2019 (the "**Fifth Report**") is to:
 - (a) update this Honourable Court with the respect to the Status of the Transaction and the related post-closing activities;
 - (b) update this Honourable Court with respect to the status of the Claims Procedure, and the Claims received by the Sales Officer; and
 - (c) provide this Honourable Court with the necessary information to support an Order (the "**Second Distribution Order**"):
 - (i) approving and authorizing the Sales Officer to make a distribution from the Sale Proceeds to each Creditor with a Proven Claim against OAI (the "**Second Distribution**"); and
 - (ii) approving the activities of the Sales Officer as set out in this Fifth Report and approving the fees of the Sales Officer and its counsel, Dentons for the period of June 1, 2019 to October 31, 2019 and November 30, 2019, respectively.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
12. The information contained in this Fifth Report has been obtained from the books and records and other information of OAI. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Sales Officer, and the Sales Officer does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Sales Officer in preparing this Fifth Report.

13. Future oriented financial information reported or relied on in preparing this Fifth Report is based on OAI management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

III. UPDATE ON THE SALES OFFICER'S ACTIVITIES

14. Since the granting of the Claims Procedure Order, the Sales Officer has:
 - (a) administered the Claims Procedure in accordance with the Claims Procedure Order;
 - (b) received and reviewed Notices of Dispute and Proofs of Claim delivered to the Sales Officer pursuant to the Claims Procedure Order, and discussed those Claims and amounts with OAI;
 - (c) continued to work with the Purchaser and its counsel with respect to the completion of the transfer of certain patient data pursuant to the Amended Asset Purchase Agreement; and
 - (d) completed other miscellaneous administrative obligations of the Sales Officer pursuant to the Appointment Order.

IV. TRANSACTION – POST-CLOSING MATTERS

15. The Sales Officer continues to monitor the post-closing data migration activities of the Purchaser pursuant to the Amended Asset Purchase Agreement. The post-closing migration relates to the transfer of certain patient data, as required pursuant to the *Independent Health Facilities Act*. The Sales Officer anticipates the completion of the post-closing migration activities by the end of December 2019.

V. STATUS OF THE CLAIMS PROCEDURE

16. Pursuant to the Claims Procedure Order, the Sales Officer was authorized and empowered to administer a dual-process claims procedure which involved: (a) delivering a Claim Statement to Known Creditors, and (b) simultaneously publishing a general call for Claims to other potential Creditors of OAI.

17. The Claims Procedure Order prescribed the following timeframe for administering the Claims Procedure:

PROCESS	DATE
Sales Officer to Mail Claims Document Package to Known Creditors	Not later than five (5) Business Days following the granting of the Claims Procedure Order
Sales Officer to Publish Notice to Creditors in Newspaper	Not later than ten (10) Business Days following the granting of the Claims Procedure Order
Sales Officer to Post Claims Procedure Order, Motion Record and Claims Package on Sale's Officer's Website	Not later than five (5) Business Days following the granting of the Claims Procedure Order
Claims Bar Date	October 15, 2019
Sales Officer to Deliver Notice of Revision or Disallowance	As soon as practicable following review of Proof of Claim or Notice of Dispute, as applicable
Creditor to Deliver Objection to Sales Officer	Within 15 calendar days following receipt by the Creditor of the Notice of Revision or Disallowance
Creditor to Deliver Notice of Motion in respect of an Objection	Returnable within 30 calendar days following receipt by the Creditor of the Notice of Revision or Disallowance, subject to the Court's availability

Response to Claim Statements

18. Subsequent to the issuance of the Claims Procedure Order, the Sales Officer mailed a Claims Document Package to each Known Creditor on September 5, 2019 and posted a copy of the Claims Document Package on its website.

19. The Sales Officer mailed 20 Claims Document Packages to Known Creditors, each of which included a Claim Statement setting out the amount of the Known Creditor's Claim, as determined by the Sales Officer following a review of OAI's account payables documentation, totalling \$90,406.16 in unsecured claim value. In addition, the Sales

Officer also delivered Claims Document Packages to the Known Creditors who had a nil balance owing (according to the OAI account payables documentation).

20. In response to the delivery of the Claim Statements to the Known Creditors two Known Creditors delivered a Notice of Dispute to the Sales Officer challenging the amount set out in the Claim Statement (the "**Disputed Known Creditor Claims**"). The Notices of Dispute assert Claims in the aggregate amount of \$15,600 over the amounts set out in the Creditor's Claims Statements.

General Call for Claims

21. In response to the general call for Claims to other potential Creditors (i.e. Creditors who did not receive a Claim Statement), the Sales Officer received a total of four Proofs of Claim totalling \$158,567.72. One Proof of Claim was received after the Claims Bar Date on October 16, 2019, however, the Sales Officer, in its discretion, has accepted the Proof of Claim as a properly filed Claim.

Determination of Notices of Dispute and Proofs of Claim

22. With respect to the Notices of Dispute and Proofs of Claim, section 27 of the Claims Procedure Order empowers the Sales Officer to:
 - (a) request additional information from a Creditor and / or OAI to assist with such review and assessment;
 - (b) request that a Creditor file a revised Proof of Claim or Notice of Dispute;
 - (c) attempt to resolve and settle any issue arising in a Proof of Claim, Claim Statement, Amended Claim Statement or Notice of Dispute in respect of a Claim;
 - (d) accept (in whole or in part) the amount of any Claim and notify the Creditor in writing; and
 - (e) revise or disallow (in whole or in part) the amount of any Claim by delivering a Notice of Revision or Disallowance to such Creditor.

23. The Sales Officer has delivered a copy of the Disputed Known Creditor Claims and Proofs of Claim to OAI.
24. The Sales Officer has completed its review of the Notices of Dispute and Proofs of Claim. In accordance with the Claims Procedure Order, the Sales Officer has determined to:
 - (a) accept the amounts set out in the Disputed Known Creditors Claims, in the total aggregate amount of \$15,600; and
 - (b) accept three of the four Proofs of Claim, in the total aggregate amount of \$6,821.72.
25. The Sales Officer is therefore recommending distributions on account of the Proven Claims in the total aggregate amount of \$112,827.88.
26. With respect to the remaining Proof of Claim (the “**Remaining Claim**”), the Sales Officer, in conjunction with OAI and its advisors, are in the process of preparing a reply to the Remaining Claim pursuant to the Claims Procedure Order. The Sales Officer anticipates delivering a reply in the near future.

VI. PROPOSED SECOND DISTRIBUTION

27. The Sales Officer is reasonably satisfied that all Claims, save for the Remaining Claim, have been fully and finally determined.
28. As detailed in the Fourth Report, following the distributions made pursuant to the First Distribution Order, there remains a surplus in the Sale Proceeds (the “**Remaining Funds**”). As of the date hereof, the amount of the Remaining Funds, held by the Sales Officer is approximately \$3,000,000. Attached as **Appendix “D”** is a Statement of Receipts and Disbursements
29. The Sales Officer proposes to make a distribution from the Remaining Funds to each Creditor with a Proven Claim, in full satisfaction of such Proven Claim.
30. The Remaining Funds are sufficient to fund the Second Distribution. In addition, the Sales Officer will continue to hold sufficient funds on account of the Remaining Claim, until such Claim is finally determined and paid.

VII. APPROVAL OF PROFESSIONAL FEES

31. The Sales Officer and Dentons have maintained detailed records of their professional time and costs since June 1, 2019 up to and including October 31, 2019 for the Sales Officer, and November 30, 2019 for Dentons (collectively the “**Fee Period**”), as detailed in the Fee Affidavit of Anamika Gadia of KPMG sworn December 4, 2019 and the Fee Affidavit of Robert Kennedy of Dentons sworn December 3, 2019 (collectively, the “**Fee Affidavits**”). Copies of the Fee Affidavits are attached as **Appendix “E”**, and **Appendix “F”**, respectively.
32. Pursuant to paragraph 26 of the Appointment Order, the Sales Officer and its counsel, shall be paid their reasonable fees and disbursements and shall pass their accounts before this Court.
33. The fees and disbursements (including Harmonized Sales Tax) of the Sales Officer during the Fee Period total \$115,967.56. The details of the time spent and the services provided by the Sales Officer are more particularly described in the Fee Affidavit of Anamika Gadia.
34. The fees and disbursements (including Harmonized Sales Tax) of Dentons during the Fee Period total \$162,272.63. The details of the time spent and the services provided by Dentons are more particularly described in the Fee Affidavit of Robert Kennedy.
35. The Sales Officer has reviewed the accounts of its counsel and believes that the accounts of the Sales Officer and Dentons are reasonable in the circumstances and respectfully requests that the Court approve the Sales Officer’s fees and disbursements and those of its counsel.

VIII. CONCLUSION

36. The Sales Officer submits this Fifth Report to the Court in support of the Sales Officer’s Motion for the relief as set out in the Motion Record and recommends that the Court grant the Order substantially in the form contained at Tab 3 of the Motion Record approving:
 - (a) the Second Distribution; and

- (b) the activities of the Sales Officer set out in the Fifth Report and the fees of the Sales Officer and Dentons as set out in the Fee Affidavits.

All of which is respectfully submitted at Toronto, Ontario this 4th day of December, 2019.

**KPMG Inc., in its capacity as Court Appointed Sales Officer of
Oxford Advanced Imaging Inc. and not in its personal capacity**



Per:

Anamika Gadia
Senior Vice President